A STUDY ON THE REGULATORY FRAMEWORK FOR CONSUMER REDRESS IN THE HEALTH CARE SECTOR IN INDIA

4th Quarter 2000

Conducted By :

Voluntary Organisation In Interest Of Consumer Education

In Collaboration with

The Ministry of Health & Family Welfare, Govt. of India
The World Bank & The Indian Law Institute

Author
Bejon Misra, Advisor, VOICE and
Assisted by Mr. Puneet Kalra & The VOICE Team

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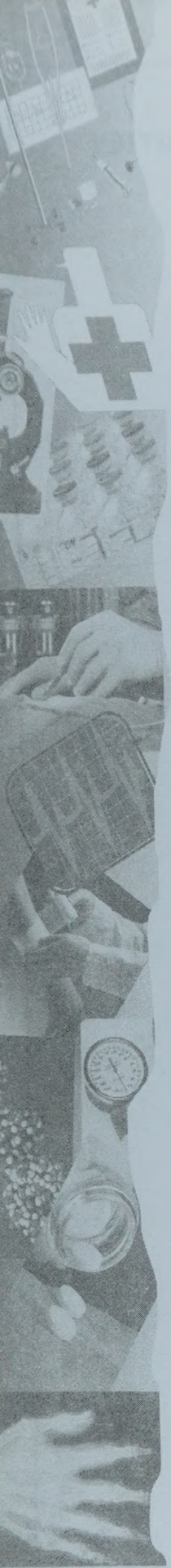

The findings, interpretation and conclusion expressed in this paper are entirely of the author and should not be attributed in any manner to VOICE, to its affiliated organisation, or to members of board.

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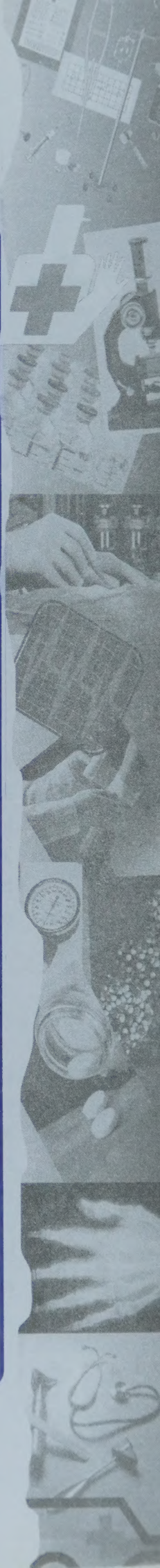


FOREWARD

How healthy is the Indian Health Service Sector? Is the question, which triggered us to do a research study and to have a closer look at the prevailing system of grievance redress inside hospitals and medical establishment providing medical services.

The paucity of knowledge regarding the current system of redress in the health sector in India called for a study be a voluntary organization in order to provide an in-depth account of the functioning of the prevailing system of patient redress. Further such a study was also required to find out malpractice, denial of services and issues of medical malpractice by medical practitioners, assess the nature of litigation, types of cases submitted to Consumer Court and response of existing medical institutional mechanisms.

The study gives a clear picture that consumers are not aware of where to go for complaints. The most ironic situation is that the Public Health service does not come under Consumer Protection Act. The redress mechanisms in these Hospitals are cumbersome and unreliable. The need for improving legal redress mechanism is very much visible. Even in the case of the private Hospitals the situation is not as impressive as it should be. The lack of adequate knowledge in the consumers has made the system even worse.

The time has come for the consumer Organisations and consumers to come forward to sensitize the Government and the service providers for a better system. Its no use to sit and criticize, but to work together to make the system more consumer friendly and for the consumer delight.

Finally a number of suggestions have been made to improve the functioning of Consumer Fora, to augment consumer awareness and their empowerment. Last but not the least the Indian Medical Council Act needs to be amended to make it consumer friendly and responsive medical professionals.

Prof. SRI RAM KHANNA
Hony. Managing Trustee

EXECUTIVE SUMMARY

Background

Despite many reports in the popular press about the plight of health care consumers and the implementation of the Consumer Protection Act (CPA) of 1986, there is paucity of information about the current system of redress in the health sector in India. The present study seeks to help close this gap by providing an in-depth account of the functioning of patient redress systems within the country. The key questions addressed by this study are:

* What is the current state of patient redress mechanisms in place at different types of health facilities both in public and private sectors?
* What is the current status of adjudication of problems between consumers and medical providers in various Consumer Forums established under Consumer Protection Act?

Methods

The study reviewed the current system of complaint redress in the private and public health care sector from three perspectives: the institutional view, the legal view and the patient's viewpoint. A questionnaire was administered at 81 randomly selected public and private sector hospitals of different sizes in Delhi, Lucknow, and Hyderabad to examine how facilities currently respond to consumer concerns. Another systematic sample of 86 medical negligence cases was selected from those filed at District Forums in the same three cities. The cases were reviewed, and structured interviews conducted with the complainants, providers, lawyers, and Consumer Forum members.

Results

The results suggest that public and private health facilities lack a professional approach to managing patient concerns, and have weak in-house redress systems. For example, a complaint box/book was physically found in only 33% of the private hospitals, and 22% of public hospitals. Only 17% of the private hospitals and 15% of public sector hospitals had guidelines for receiving and processing complaints. An analysis of the cases filed at Consumer Forums showed that very few of them were for medical reasons (they ranged from 0.1% to 2% of total cases). Complainants were largely educated and forward caste males. Only half of the complainants were satisfied with the Consumer Forum mechanisms, compared with 65% of the providers. Long delay in reaching judgement was a major problem. Over 90% of the cases took longer than one year to reach judgement, whereas the law mandates a ruling within 90 days.

Conclusion

This study highlights the poor functioning of patient redress mechanisms at the facility level in both public and private sectors. Specific recommendations outlined in this paper include the use of mandatory citizen's charters and institutionalization of complaint procedures. Both consumers and providers need to be better educated about how to address consumer concerns and complaints at the facility level. Standards concerning the quality of care are needed so that patient knows what they can expect, as well as standards established for consumer redress mechanisms.

For cases of alleged medical negligence and other consumer complaints that cannot be dealt with at the facility level, there is a need to strengthen the legal redress mechanisms. Although the Consumer Forums show some encouraging signs, there is a great need to broaden the scope of legal redress for medical negligence for the poor and uneducated. Efforts are also needed to develop ways to speed up the redress processes through the Consumer Forums, in addition to alternative regulatory and redress mechanisms. This report recommends how to improve the functioning of Consumer Forums, strategies to increase consumer awareness and empowerment, and recommends amending the Consumer Protection Act and Indian Medical Council Act, in part to bring public hospitals under the purview of the CPA.

About VOICE

(Voluntary Organisation in Interest of Consumer Education)

Our Vision

Voice works towards protecting consumer rights by creating synergy between technological advances, traditional knowledge and right policies through its educational and research activities. Voice believes that forging beneficial links amongst consumer, market and government interests will promote sustainable and ethical consumption and production now and in future.

Our Mission

To promote right choices in a volatile and dynamic market place by providing consumer education for all through integrating experiential good practices and scientific knowledge for the safety and health of consumers and the environment.

VOICE is actively involved in the Comparative Testing of consumer products for consumer awareness and education. VOICE generates and disseminates the information to Indian consumers for informed decisions while buying consumer products. VOICE was established in 1983 with the help of Professors and Students of Delhi University. It was registered in 1986 as a Voluntary non-profit, non-political consumer group. It was registered as a public charitable trust and subsequently registered as a "recognised Consumer Association" under the MRTP Act.

Other main activities, at present are: -

* Promoting Consumer Education through awareness programs.
* Scientific Interventions to make the market place better and consumer oriented.
* Mobilise Public Opinion to change the laws for the benefit of the consumers.
* Providing legal advocacy and guidance.
* Networking with other consumer groups on public interest issues.
* Spreading the consumer movement to new areas to benefit the poor and disadvantaged consumer.
* Empowering Women Consumers to exercise their rights.

As a full member of Consumers International, VOICE has been actively involved on various consumer issues globally and at the National level in India. It has shown demonstrative results in area of food safety for nearly a decade. VOICE is a member of various sub-committees set up under Central Committee for Food Standards, by Ministry of Health, Government of India. Voice is also working actively on Codex related issues and Biotechnology.

VOICE has been commissioned by The World Bank, National Pharmaceutical Pricing Authority and Department of Food Processing Industries to conduct studies on various issues concerning consumer concerns on delivery of health services, accessibility of medicines for the poor and implementation of the national laws on food safety, labelling and packaging. Similarly VOICE has been working in the telecommunication sector with the Ministry of Communication and the Telecom Regulatory Authority of India. Since 1999, a new agreement has been signed between Consumer Co-ordination Council (CCC), Ford Foundation and VOICE to work on the Electricity sector with Delhi Vidyut Board as the part of the ongoing programme on Good Governance and Citizen's Charter. A new area for VOICE has emerged in training public service organisations on customer care and complaints handling.

Introduction

Developing mechanisms to effectively increase the voice of communities in the management of health services is of utmost importance today. A participatory approach to health administration entails a constant system of checks, whereby those who benefit from the services participate actively in the efficient functioning of the system. An effective redress mechanism enables consumers to have direct access to systems that rectify the inefficiencies and maladies of the present order. Consumers in India have for their benefit the Consumer Protection Act 1986, whose provisions empower them to challenge the quality of health care services provided to them.

Unlike developed countries where mechanisms of consumer redress are firmly established as an integral part of the larger tradition of civic rights, the subject of consumer redress is a relatively new concept in India, particularly in the health sector. The deterioration of health care services, coupled with a general lack of accountability of providers towards consumers, brought home the need for building a more permanent system of redress in the health sector. The significant judgement by the State Commission of Orissa in Smt. Sukanti Behera v. Dr. Sashi Bhusan Rath (1993), upholding the rights of patients to challenge the quality of health care services, was a landmark decree in the history of consumer redress within India. Till then, the medical fraternity had generally resisted acknowledging that medical services came within the purview of the broader provisions of the Consumer Protection Act. The judgement by the Supreme Court in the Indian Medical Association v. V.P. Shantha (1995) settled the matter by explicitly including medical services under the protective sheath of the Consumer Protection Act.

Payment for health care services within the country in both the public and the private sector may be classified into roughly three board categories.

* One, where services are rendered free of charge to everybody availing the said services.
* Two, where charges are said to be paid by everybody and,
* Three, where charges are required to be paid by persons availing services but certain categories of persons who cannot afford to pay are rendered services free by charge.

In accordance with the judgement delivered in the above mentioned Indian Medical Association v V.P Shantha case, the right to challenge the quality of health care services extends to: (a) all patients who pay for services (second category), and (b) such patients belonging to the poorer section availing free services from such institutions otherwise rendering services on a payment basis (third category). It is noted that under the Supreme Court ruling, the first category where services are rendered totally free of charge are excluded from the purview of the existing Consumer Protection Act.

Key Questions

To ensure sustained delivery of quality services in the health sector, service providers need to constantly look at the dimensions of service, by encouraging constant customer feed back. In India, much of the services sector has little relationship with its consumers. In order to encourage the consumer to demand quality goods and services, the Consumer Protection Act 1986 was enacted to reach quick and relatively inexpensive redress for removing defects and service deficiency, and to pay compensation for the loss or damage caused by deliberate acts of negligence or unfair trade practices, which had become difficult in the traditional legal system.

The present study by VOICE seeks to provide an in-depth account of the functioning of the prevailing system of patient redress within the country. The need for such a study primarily arose from the paucity of knowledge regarding the current system of redress in the health sector in India. The key questions addressed by the study are:

* What is the current state of patient redress mechanisms available at different types of health facilities both in public and private sectors?
* What is the current status of adjudication of problems between consumer and medical service providers in various Consumer Forums established under Consumer Protection Act?

Methodology

For conceptual clarity the study chose to review the current system from essentially three standpoints. First is an institutional view at the level of hospitals. Secondly is a legal view from the Consumer Forums. Finally, we look at the viewpoint of the consumer. The study examined procedures adopted at health care facilities to respond to consumer concerns and complaints, as well as the utility and effectiveness of different forums established under the Consumer Protection Act. It took into consideration consumer, provider and legal perspectives and review of outcomes of medical negligence cases in legal and statutory (medical councils) systems.

In a related study, The Indian Law Institute conducted a detailed desk review by cataloguing the current laws and status of adjudication between consumers and medical service providers in each part of the legal system. VOICE conducted this field study to capture the ground reality concerning redress mechanisms at health facilities themselves, and the next line of legal redress, the Consumer Forums.

To begin with, a detailed list of all the information required for the study was drawn up. Once all the information necessary to attain the objectives was listed, experts were identified in each of the segments and discussions were held with them. Questionnaires were prepared in October 1999 for pilot testing in hospitals and consumer sector based on these discussions. The questionnaires were pilot tested in Delhi in November 1999. Based on pilot testing and suggestions received, the questionnaires were suitably modified before they were finally used for the field survey.

The field survey was conducted in 3 major centres: Delhi and Lucknow in the north and Hyderabad in the south. The field survey was divided into two parts. The first part dealt with consumer redress at the hospital level, while the second dealt with medical negligence cases filed in Consumer Forums. For the hospital level study, a random selection of hospitals was made from a list of hospitals in each city, stratified by facility size covering both public and private sectors. In the private sector, nine big hospitals (more than 100 beds), 15 medium (31-100 beds) and 30 small (less than 30 beds) sized hospitals were selected. In the public sector, three tertiary hospitals, nine district level hospitals, and 15 Primary Health Centres (PHCs) were covered (Table 1). A structured survey was made of the redress mechanisms available at these centers, including an investigation of the responses and outcomes.

For the second part of the study, data were acquired from the District Forums of Delhi, Lucknow and Hyderabad. A sample was drawn of the most recent medical negligence cases heard (Table 2) Interviews were conducted with the concerned complainants, service providers, lawyers and members of consumer forums in all three cities. Cases were divided into two sub-categories, namely, pending and closed. In all, there were 86 cases, of which 46 were pending and 40 were closed.

Table 1

Distribution of Samples Covered in Hospital Sector									
	Private				Public				Grand Total
	Big	Medium	Small	Total	Tertiary	District	PHC	Total	
Delhi	3	5	10	18	1	3	5	9	27
Lucknow	2	6	10	18	1	3	5	9	27
Hyderabad	3	5	10	18	1	3	5	9	27

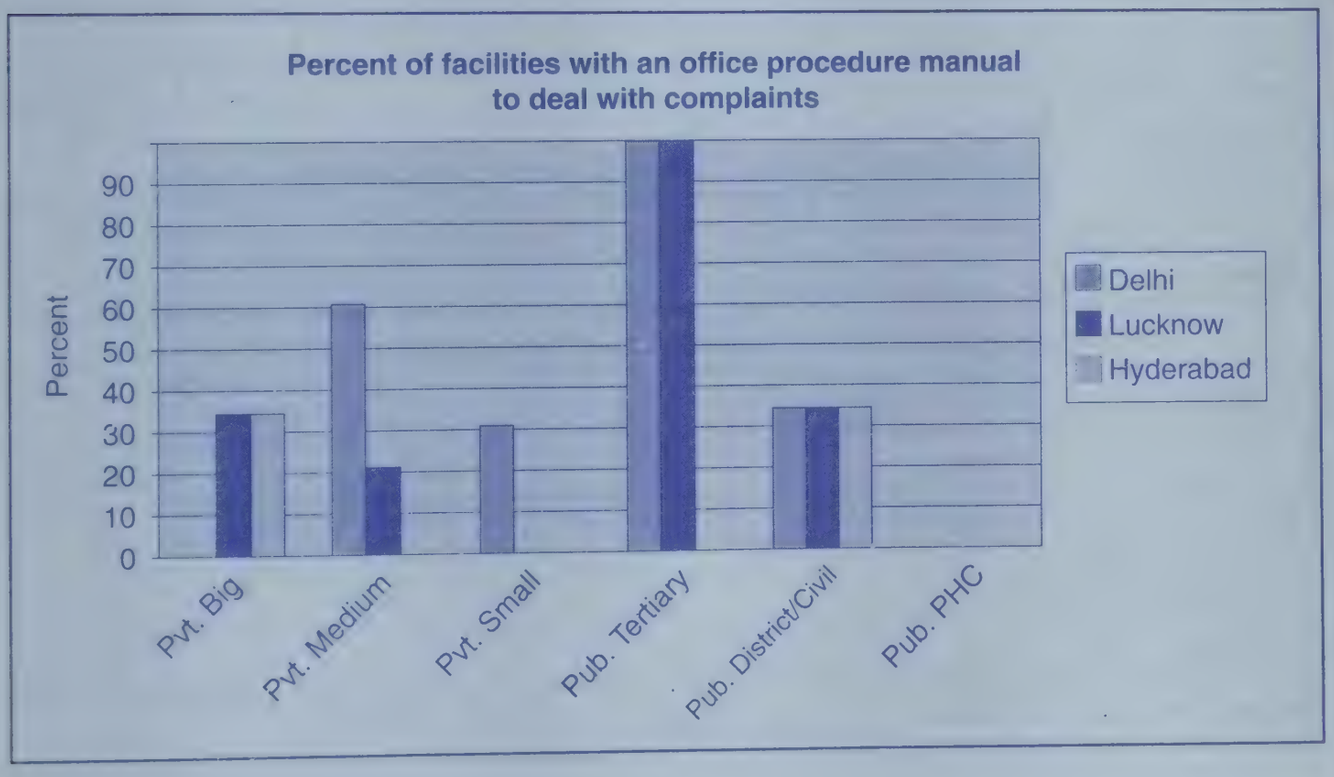
Table 2

Distribution of Samples Covered in Consumer Sector			
Cases Type	DELHI	LUCKNOW	HYDERABAD
Pending Cases	16	16	14
Post Cases	16	16	8

Consumer Redress at the Hospital Level

A total of 81 hospitals were surveyed as part of the study. As demonstrated below, the survey revealed a certain degree of slackness on the part of hospital authorities in terms of offering facilities for prompt redress of consumer complaints.

Despite the fact that the provisions of the Consumer Protection Act clearly requires all complaints made, to be in a "written" form; out of the total number of 81 surveyed hospitals, only 38 units (47%) admitted to having complaints in writing. This means that 43 units (53%) do not even bother to take the complaint in writing or acknowledge the complaint in writing. The lacuna in the redress system was more apparent when a lesser number, 12 units (15%), confirmed having a written manual for receiving and processing complaints. A written manual is a format detailing the guidelines to be observed while attending complaints by any aggrieved person who makes a complaint against a doctor or service made available to a patient. It may be interesting to note that none of the tertiary hospitals in the public sector in Hyderabad had written manuals, whereas those in Delhi and Lucknow did. Few of the private hospitals had documented complaint procedures, including none of the three big private hospitals in Delhi. A standardized procedure to handle complaints was clearly lacking amongst the facilities sampled for the study. While the big and the medium sized hospitals in both the private and the public tended to have specific units to resolve consumer disputes, the smaller units tended to fall back on informal systems or had no systems at all



(Figure 1).

Tables 3 & 4 below characterise the mechanisms of redress available to patients in the surveyed hospitals.

Table 3

Distribution of Facilities Surveyed by Availability of Patient Redress System									
	Private				Public				
	Big	Medium	Small	All	Tertiary	District	PHC	All	Total
Number of Facilities Covered	8	16	30	54	3	9	15	27	81
Number of Facilities having Procedure manual or guidelines for receiving and processing complaints	2 (25%)	4 (25%)	3 (10%)	9 (17%)	2 (67%)	2 (22%)	0 (0%)	4 (11%)	13 (15%)
Number of Facilities having unit/individual responsible for dispute settlement	8 (100%)	11 (69%)	13 (43%)	32 (59%)	2 (67%)	6 (67%)	10 (67%)	18 (67%)	50 (62%)
Number of Facilities having complaint box/book	6 (75%)	11 (69%)	10 (33%)	27 (50%)	3 (100%)	5 (56%)	6 (40%)	14 (52%)	41 (51%)

Table 4

Distribution of Facilities with Some Consumer Redress Systems by Frequency of Review (Days)				
Frequency	Private		Public	
	N	%	n	%
Daily	18	67	7	50
2-7 days	5	19	3	21
> 7 days	4	14	4	29
Total	27	100	14	100

In the private sector, it was observed that as the size of the hospitals became smaller, the complaint redress mechanism opted to become more informal. While all eight of the big private hospitals have more formal systems for dispute settlement, in the smaller hospitals, only 13 out of 30 (43%) had specific mechanisms. In the public sector, two thirds of the units at each level had individuals responsible for dispute settlement. In terms of availability of complaint boxes and books, a similar trend was discernible. All the 3 tertiary level hospitals had complaint boxes and books. However, only six PHCs out of the 15 surveyed had such facilities available to the public. In the private sector six out of eight big hospitals had complaint boxes/books and only 10 out of 30 small hospitals had any such facilities available.

It was also observed that the private sector tended to open their complaint boxes/books more frequently than those in the public sector do. For example, in the district hospitals in Delhi, no staff had responsibility for opening complaint boxes and books. In Hyderabad, the district hospitals were found to open their complaint boxes on a weekly basis. During the survey it was observed in one of the premier public institutions of the country, that complaint boxes/ books were opened only once in thirty days. Considering the large number of both in-door and out-door patients, the laxity shown by authorities in attending to complaints indicates a poor level of management in the delivery of health care services.

The findings from the site review of facilities confirmed the problem of management inattention to consumer concerns. Although many units in both the public and the private claimed to have complaint boxes and books, the survey team actually was able to locate complaint boxes in only 11 (27%) of the units. In the private sector, whereas all six big hospitals claiming to have complaint boxes/books actually had these facilities, in the medium sized hospitals only two out of 11 and in the small one out 10 units actually had complaint boxes/books (Table 5). In the public sector, while none of the primary health centres had any such facilities, only in one of the three tertiary hospitals and one out of five district level hospitals were complaint boxes/books found. It was observed that none of these 11 had any accompanying acknowledgement slips for the benefit of consumers making a complaint. Also only two had supplied pens for use by patients wanting to write a complaint. Just over half (54%) of the 81 units had a prominent "May I help you" desk located either in the reception or at the main entrance. Only five (6%) had a visible board highlighting the complaint redress procedures, close to the help desks. Only 17 (21%) had a board displaying prices of services offered.

Table 5

Distribution of complaint Book/Box : Claimed and observed									
	Private				Public				
	Big	Medium	Small	All	Tertiary	District	PHC	All	Total
Number of Facilities Covered	8	16	30	54	3	9	15	27	81
Number of Facilities having complaint box/book	6 (75%)	11 (69%)	10 (33%)	27 (50%)	3 (100%)	5 (56%)	6 (40%)	14 (52%)	41 (51%)
Number of Facilities actually had complaint box/book	6 (100%)	2 (18%)	1 (10%)	9 (33%)	1 (33%)	1 (20%)	0 (0%)	2 (22%)	11 (27%)

In terms of complaints, an inquiry into the nature of complaints lodged revealed that complaints relating to clinical services were surprisingly few. In the private sector, the largest number of complaints (43%) were related to sanitation, followed by complaints in hospital utilities (41%) and billing (28%). In the public sector, sanitation was once again the most frequent complaint (41%), followed by hospital utilities (30%) and medical care 26%. In the private sector, only six units (11%) acknowledged receiving complaints about medical care, compared to seven (26%) in the public sector. The fact that complaints related to the quality of clinical services did not come up as a major issue in either the public or private sector may reflect poor knowledge and low expectations of the consumers regarding the quality of health services, or simply that providers did not acknowledge clinical problems. Table 6 below provides a glimpse of the types of complaints commonly received by the surveyed units.

Table 6

Distribution of Types of Complaints Commonly Received According to Type of Facility

Facilities	Private				Public			
	Big(8)	Medium(16)	Small(30)	All(54)	Tertiary(3)	District(9)	PHC(15)	All(27)
Medical Care	1 (13 %)	3 (19%)	2 (7%)	6 (11%)	1 (33%)	3 (33%)	3 (20%)	7 (26%)
Nursing care	2 (25%)	6 (38%)	4 (13%)	12 (22%)	1 (33%)	1 (11%)	2 (13%)	4 (15%)
Sanitation	5 (63%)	11 (69%)	7 (23%)	23 (43%)	3 (100%)	4 (44%)	4 (27%)	11 (41%)
Hospital Utilities	6 (75%)	7 (44%)	9 (30%)	22 (41%)	1 (33%)	4 (44%)	3 (20%)	8 (30%)
Security	3 (38%)	3 (19%)	3 (10%)	9 (17%)	2 (67%)	0 (0%)	0 (0%)	2 (7%)
Billing	5 (63%)	5 (31%)	5 (17%)	15 (28%)	0 (0%)	1 (11%)	0 (0%)	1 (4%)
Waiting room	2 (25%)	4 (25%)	3 (10%)	9 (17%)	1 (33%)	4 (44%)	0 (0%)	5 (19%)
Report	4 (50%)	1 (6%)	0 (0%)	5 (9%)	1 (33%)	0 (0%)	0 (0%)	1 (4%)
No Complaints	0 (0%)	0 (0%)	8 (27%)	8 (15%)	0 (0%)	1 (11%)	4 (27%)	5 (19%)

In terms of handling of complaints, the private sector appeared to be more adept than its public counterpart. Whereas all eight big hospitals in the private sector had personnel designated specially to look into consumer complaints, in medium sized hospitals only 69% had a specific unit or individual responsible for dispute settlement, while only 40% of small hospitals had designated personnel. In the public sector, two out of three tertiary hospitals reported having such specific mechanisms, whereas two thirds of the district level hospitals and only 53% of the PHCs admitted to having such mechanisms. Specially designated officers, such as Manager (Housekeeping) or other senior level administrative officers as Manager (Administration), usually looked into the complaints in the private sector, especially in the big and medium hospitals. In the public sector, the officers-in charge or the concerned Medical Superintendent looked into the complaints. Most complaints were claimed to be resolved on an average in weeks' time, especially those related to hospital amenities and administrative matters. The time taken for resolution of clinical cases was however more variable and longer, ranging between 1 day to 20 days. Table 7 below, illustrates the time taken to resolve complaints in public and private sector hospitals.

Table 7

Time Taken to Respond to Complaints in Public and Private Hospitals

Time Taken to respond to complaint	Public Sector		Private Sector	
	N	%	N	%
< 1 day	4	15	15	28
1 - 7 days	13	48	28	52
> 7 days	2	7	0	0
No Complaints	8	30	11	20
Total	27	100	54	100

An interesting point which came to fore during the survey, was that only 7% of all facilities surveyed claimed to have had a medical negligence case registered against them in the last one-year. Five of these six facilities belonged to the private sector, and only one, a tertiary level hospital in Lucknow to the public sector. Nearly half of the facilities undertook measures to protect themselves in advance, particularly in the private sector. Seven of the eight big private hospitals were covered under professional indemnity insurance. 12(40%) out of 30 small and 13 (80%) out of 16 medium units in the private sector were also either covered by insurance or resorted to hiring legal councilors in case of need.

Consumer Redress at the Consumer Forum Level

In accordance with the provisions of the Consumer Protection Act, every district of the country should have a consumer court referred to as the District Forum, and every state capital, a State Commission. At the country level, a National Commission functions as an apex body. The courts are arranged in a hierarchical order (district- state- national), with the Supreme Court of India vesting the final authority to adjudicate on all appeals arising in matters of consumer concern.

At present, the redress system in health is still in a very nascent state in India. Medical cases make up a very small percentage of the total cases appearing before Consumer Forums. The data given below in Table 8 shows the number of cases filed in the State Commission and District Forums in Delhi, Uttar Pradesh and Andhra Pradesh, indicating that medical cases comprise between 0.1% to 2% of the cases heard.

Table 8

Distribution of Medical Negligence Cases Filed in Various Consumer Courts in Three States

Courts	1997			1998			1999		
	Total Cases Filed	Medical Calse	% of medical Cases	Total Cases Filed	Medical Cases	% of medical cases	Total cases Filed	Medical Case	% of medical cases
National Commission	NA	51	NA	2031	51	2.5	3221	46	1.4
State Commission Delhi	1450	32	2	1573	32	2	1755	36	2.1
State Commission Uttar Pradesh	NA	NA	NA	1113	NA	NA	999	NA	NA
State Commission Andhra Pradesh	2650	NA	NA	3406	NA	NA	4185	NA	NA
District Forum Delhi	6472	NA	NA	17283	32	0.2	20620	47	0.2
District Forum Lucknow	2260	8	0.3	2004	12	0.6	2138	13	0.6
District Forum Hyderabad	1400	NA	NA	4026	42	1	2052	2	0.1

NA: Not Available

Consumer Forums and Consumers

As part of the study, 86 medical negligence cases were randomly selected in all from the District Forums in the three cities. Of these 86 cases, 40 were disposed cases while 46 were pending cases. Table 9 below, gives a demographic profile of the complainants surveyed.

Table 9

Characteristic of Sampled Consumers Cases					
		Delhi (32)	Lucknow (32)	Hyderabad (22)	Total (86)
		%	%	%	%
Age	20-35	3	27	27	19
	36-45	50	34	27	37
	46-55	28	27	18	24
	55+	19	14	28	20
Sex	Female	40	41	18	33
	Male	60	59	82	67
Education	Up to 8th Class	15	12	14	14
	Matric	19	16	14	16
	Intermediate	3	6	26	12
	Graduate & above	63	66	46	58
Caste	SC/ST	3	6	0	3
	Others	97	94	100	97
Occupation	Service	38	41	36	38
	Business	40	9	14	21
	Professional	3	19	5	9
	Agriculture	0	3	9	4
	Others	19	28	36	28
Annual House hold Income	<Rs. 60,000	59	59	59	59
	Rs.60,000-1,20,000	31	31	18	27
	> Rs. 1,20,000	10	10	23	14

An analysis of the above table reveals certain interesting findings on variables governing consumer behavior. For example, the educational profile revealed clearly the link between education and consumer awareness. Nearly 60% of the respondents had graduate or postgraduate education, and were largely involved in formal sector occupations. The profile also revealed that persons with fixed incomes used the Forums more often than people without a steady source of income.

The filing of only three cases (3%) by persons belonging to the SC and ST, and 30 (33%) cases by women indicates that the vulnerable sections of the society are yet to fully benefit from the consumer redress mechanisms established in India.

The cases of medical negligence case filed by the above consumers were namely those associated with wrong diagnosis and treatment leading to suffering and even death of patients. The reasons for claims from analysis of 46 pending cases are presented in Table 10.

Table 10

Distribution of Pending Cases by Reasons for Claims

Nature of Claim	Number	%
Wrongful death - Patient dying on account of wrong treatment	7	15
Physical loss of function - Patient losing physical function such as losing eye sight, inability to walk etc. on the account of wrong diagnosis and treatment	10	22
Other kinds of damage - Suffering due to operative or other treatment procedures without loss of physical function or death	29	63

Out of the 86 complainants, 43 (50%) claimed to have approached the hospital authorities first. The main reason according to these 43 consumers for approaching the Consumer Forums was dissatisfaction with the redress mechanisms at the hospital level. The denial of a proper hearing and the fact that their complaints were not taken seriously by hospital authorities made them approach the Consumer Forums. More than a half (57%) of the sampled consumers claimed to have approached the Consumer Forums on their own. Only 4% acknowledged taking the help of consumer groups. The media had played a role in influencing 7% of complainants, who stated that their awareness about consumer issues was due to frequent media coverage of such issues. Most of the complainants (80%) were aware of the consequences if the complaints were found to be vexatious.

The review of the 46 pending cases in Delhi, Lucknow, and Hyderabad brought forth a number of interesting facts. Whereas 18 (39%) out of 46 cases were filed within the previous year, 22 (48%) of cases were filed 1-5 years ago, and 7 (13%) were found to have been filed more than 5 years ago. In terms of the status of the pending cases, only 12 (26%) were found to be in their final stages. In 21 (46%) others, the evidence requested from the opposite party was still being awaited, while in 13 (28%), an initial reply from the respondent had yet to come. No reasons stood out for the delay from the complainant's perspective: 27% of them blamed the Consumer Forums for the delay, whereas 19% found the non-co-operative attitude of the concerned hospital authorities to be the chief stumbling block. The prevailing practice of Forums to give repeated adjournments every time the hospital authorities did not present themselves was quoted as a relevant case in point. Whereas 5 (11%) persons remained indifferent, 23 (51%) expressed unhappiness, and only 18 (38%) claimed to be generally satisfied with the working of the Consumer Forums (figure 2).

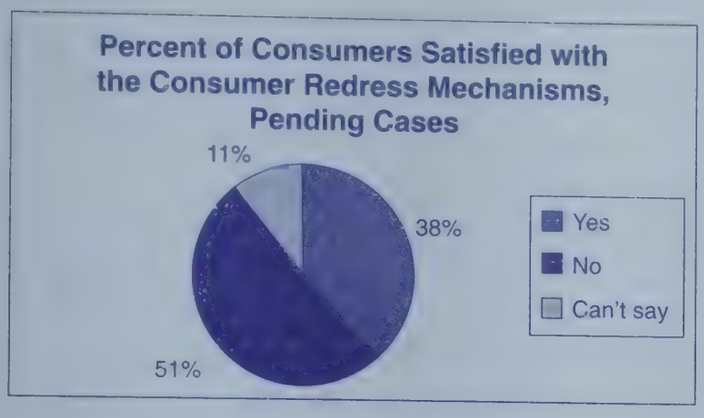


Figure 2

Similar trends were found among the 40 completed cases. Only 15 (38%) were satisfied with the procedures, whereas 24 (60%) expressed dissatisfaction. The delay in the proceedings was a major problem. In 37 (93%) of the cases, the time taken to reach judgement was beyond the stipulated period of 90 days. Only 5% had been resolved within the span of a year, whereas 80% of the cases had taken between 1-5 years, and 15% had taken more than 5 years (Figure 3)

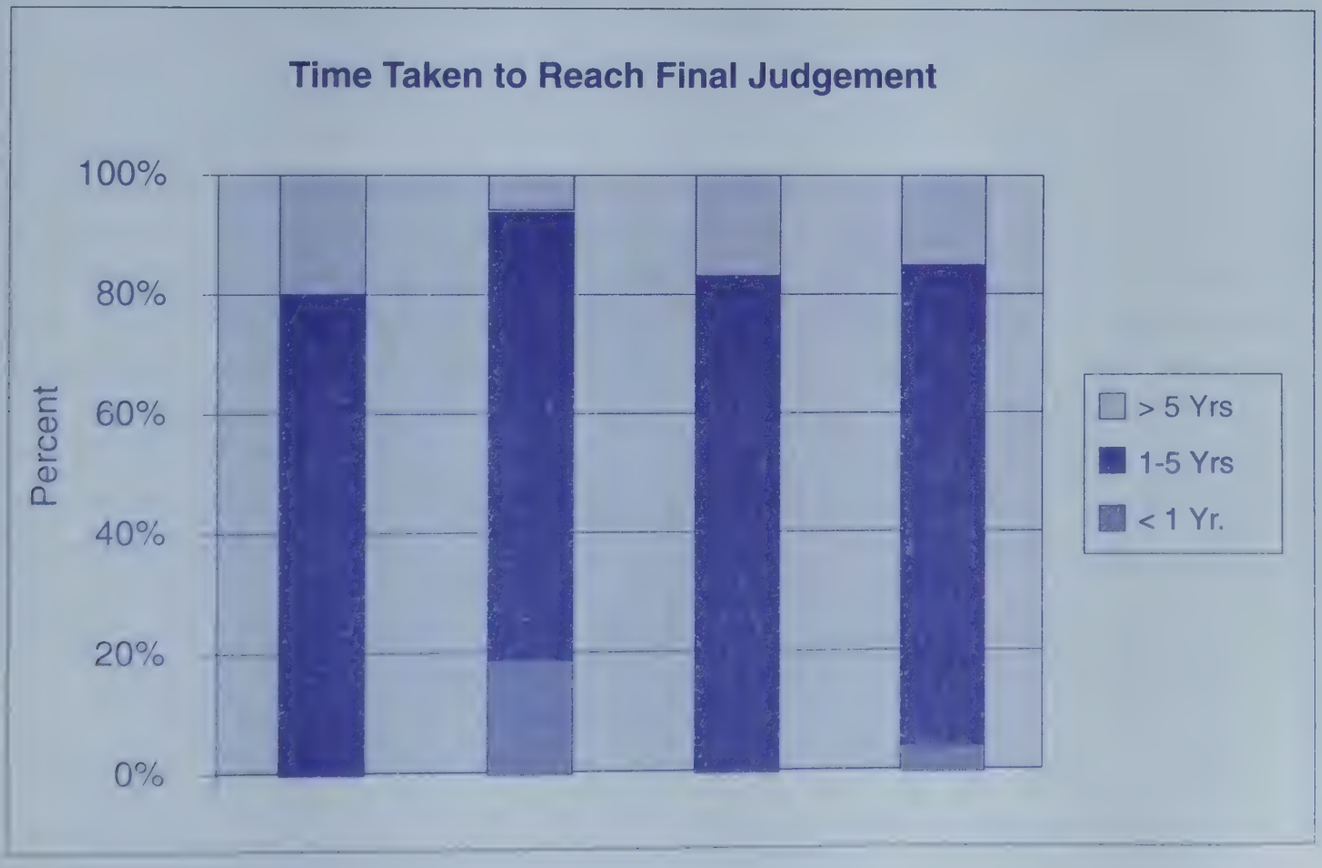


Figure 3

Just over half of the complainants (56%) were unhappy with the orders passed at the end of the litigation. One fifth of the persons found the decision to be "one-sided", while 10 others (25%) felt that the complexities associated with medical negligence cases had not been adequately explored.

In terms of outcomes, out of the 40 "completed" cases, 33% were dismissed, 42% the concerned provider was asked to pay compensation to the consumer, and in 25% of cases, the consumer was required to pay the provider. Compensation to the consumer usually covered the principal amount paid by the consumer, though at times, extra sums were also included. In almost half of these cases (47%), the compensation was less than Rs. 10,000. In 2 such cases (12%), more than Rs. 1,00,000 was awarded as compensation, another 2 (12%) were compensated between Rs. 50,000 and Rs. 1,00,000, and 5 (29%) were awarded between Rs. 10,000 and Rs. 50,000. Ten persons out of these 17 cases found the compensation incommensurate. The grant of monetary relief especially in cases of medical negligence though commendable, was considered by these 10 as being too little for all the trouble taken. In comparison to the awards, the costs for the complainants were also modest. In 7 (22%) of all cases, consumers were found to have spent less than Rs. 1000, in 17 (53%) cases between Rs. 1000-5000, and in 8 (25%) >Rs. 5000. Of the total group of completed cases, 40% were unhappy over the fact that they had been unable to recover the money they had spent.

Cases where the consumer was required to pay the defendant were usually cases where the charges leveled against the provider could not be proven. The compensation amounts in such cases were small and were generally found to range between Rs. 2000 to Rs. 5000.

Only 11 (27%) out of the 40 complainants decided to appeal at the higher level to challenge the decision of the District Forum. Considering the number of man-days spent and the money involved, there was a ready aversion to spending more money, time and energy at the higher courts. The complainants cited reasons such as "lack of time", "no money to waste", "justice may not be done", as reasons supporting their decision of not contesting the order given.

The Viewpoint of the Providers

The views of the providers interestingly were found to be quite different from that provided by consumers. In contrast to the 50% of complainants, who claimed to have first approached the health facility to deal with their complaint, only 3% of the providers interviewed said that the patients had approached them before going to the Consumer Forum. Pitted against each other as opposite parties in Consumer Forums, conflicting accounts such as this establish that the present system of redress had inevitably led to a great deal of mistrust between both the consumers and the providers. Both parties were found to be generally reluctant to make accurate information available.

Providers from both big and small hospitals showed a preference towards the resolution of all disputes at the level of hospital itself. Over half (54%) of the defendants in the 46 pending cases claimed to have in place special facilities for handling consumer complaints. Specific mention was made about the existence of complaint boxes and books within the premises and also special officers to whom complaints could be addressed. Smaller units preferred consumers to contact them personally so that complaints could be looked into immediately.

A quarter (25%) of the 46 providers in the pending cases held the opinion that the Consumer Protection Act was biased in favor of the consumer, giving the latter easy leeway to drag medical institutions to court. Only 15% of the providers felt that people misused the act. Another 17% of the providers felt that the Act was largely discriminatory by excluding the public sector from its purview, and sought to place the latter in an advantageous position vis-a-vis the private sector. Doctors working in government hospitals were said to be "doubly secured", whereas the one's working in the private sector had always the threat of an impending court case before them.

Nearly a quarter of providers (24%) blamed the heavy filing along with the failure to produce concrete evidence on the part of consumers as the main reasons for delay. 19% of providers also felt that Consumer Forums were lax in giving judgements and did not have the technical competence to investigate in depth, cases of medical negligence. One fifth said that they were now very cautious in their dealings with complaints, and had tightened their own monitoring systems to avoid any such eventuality from arising. Given their institutional status, providers were generally found to be well equipped legally to face the challenges of prolonged litigation. 70% of the providers were found to have engaged lawyers, while some hospitals had regular legal staff manage their cases. In Delhi, only 3 (19%) of the defendants in the pending cases engaged lawyers whereas in Lucknow 15 (94%) and in Hyderabad 14 (100%) engaged lawyers. The difference between Delhi vis-a-vis Hyderabad & Lucknow may be due to lack of in-house legal resources. The difference may also be due to the high awareness within the providers in Delhi about the Consumer Protection Act, which allows appearing before the Consumer Forums in person rather than by engaging lawyers (Figure 4).

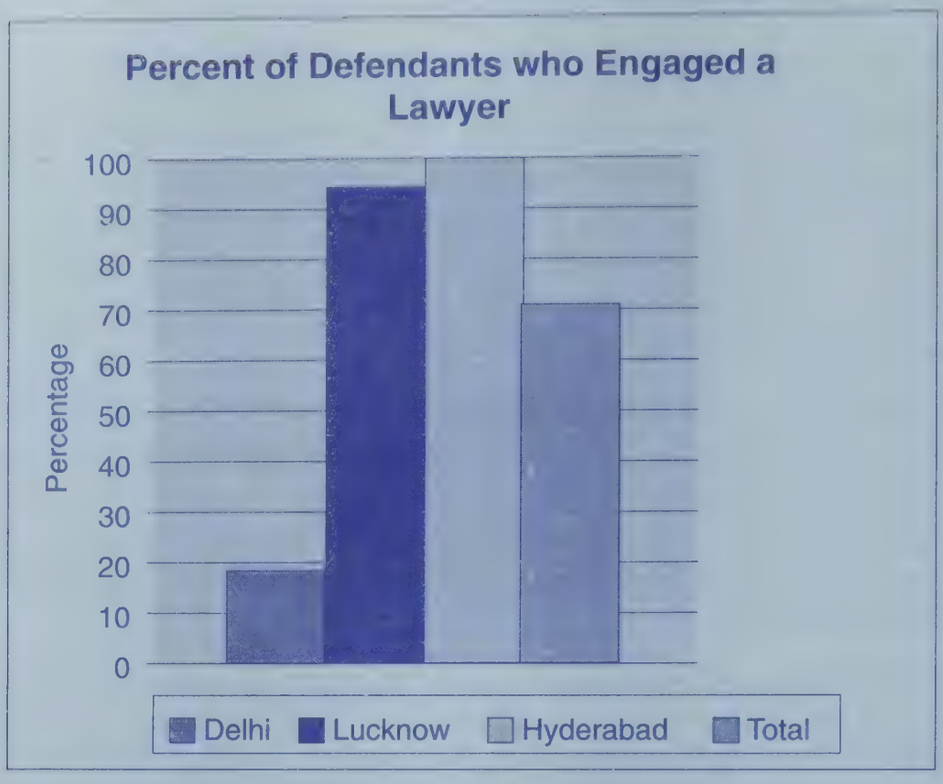


Figure 4

Finally, 65% of the providers expressed satisfaction with the final orders passed, while 35% were dissatisfied. Only 25% of the providers expressed a desire to go onto the next level of appeal.

The Viewpoint of the Lawyer's

71 lawyers were interviewed in total. The lawyers, like the consumers and the providers, were divided into roughly two main categories- one, those whose cases were pending, and the other whose cases had been completed. In the pending cases, out of the 39 lawyers interviewed, 30 (77%) claimed to be working on behalf of consumers, while 9 (23%) were found to represent the providers. Out of these 39, 17 (44%) claimed to be working on more than 50 consumer cases at a time.

More than a quarter (28%) of 39 lawyers with pending cases felt that the heavy volume of cases before the courts was the prime reason for delays. The existing infrastructure of the Consumer Forums was largely inadequate in handling such a large volume of cases. Staff shortages coupled with lack of experienced members in the Consumer Forum added extra pressure on those already working. In such circumstances the net product was that the entire process of consumer redress became essentially slow and tardy, as a result of which very few of the clients actually expressed any desire to go onto a higher court for redress.

Out of the 40 closed cases the lawyers were hired in 32 cases. Out of these 32 cases, only 37% of the lawyers were asked by their clients to file an appeal at a higher level, while 63% reported no desire to carry on litigation proceedings any further.

Most of the lawyers (87%) expressed a desire for specific reforms in the consumer redress system. Some of the measures advocated are shown below Table 11

Table 11

Recommendations for Improving the Efficiency of Consumer Forums		
Recommendation	**No**	**%**
Increase both the staff and the number of Consumer Forums per district	12	35
Make the period for responding and producing evidence time bound	6	17
National Commission should formulate clear procedure for consumer forums	3	9
Reduce the scope for political intervention in the working of consumer forums	3	9
Let the affected person to be present physically if possible	2	6
Make one single person in charge of the forum instead of present three member bench	2	6

The Viewpoint of Members of the Consumer Forums

19 members belonging to different Consumer Forums were interviewed in the course of the study. More than three fourths (79%) of them agreed that medical negligence case were usually not disposed of within the stipulated period of 90 days. Five members felt that the heavy number of cases was primarily responsible for the slow processing of medical cases. According to four members, the complexities of these cases make it nearly impossible as well as inadvisable to give a quick judgement within the stipulated time frame, and was the main reason for delay. Four other members felt that inadequate infrastructure of Consumer Forums was the prime reason.

Most members (84%) interviewed were of the opinion that the present system, however imperfect, had indeed provided an opportunity to both women and persons belonging to poor families to voice their concerns and seek justice against the poor delivery of health care services. The same proportion also felt that since government hospitals were run by the tax payer's money, it was important that such institutions also be brought under the purview of the present Consumer Protection Act. The Consumer Protection Act was felt to have helped generate a degree of accountability in the private sector, and it was time for the rules to be amended so that the Indian public could seek redress against both the private and the public sector hospitals.

Issues

The survey at the hospitals and the accompanying review of medical negligence cases heard at Consumer Forums have confirmed the need for urgent and immediate reforms in the present system of consumer redress in health care. The findings revealed a disturbing trend of ad hoc practices in the management of consumer complaints in the majority of hospitals. Whereas the large and medium sized hospitals in both the public and private were found to have established mechanisms for dispute settlement, smaller hospitals were found to resolve disputes primarily through informal means. However, in both the big and the small hospitals, the present system offered no concrete guarantees to the complainants that the authorities would actually address their problems within a specified time frame. The absences of a fixed period for the resolution of disputes inevitably meant that most cases were either resolved almost immediately or were left unresolved. It is of significance that the unresponsive attitude of the hospital authorities was claimed by consumers to be one of the main factors responsible for them to approach the courts.

Concerning the functioning of Consumer Forums, it is noteworthy that the majority of both consumers and providers described their experiences as largely negative. Prolonged litigation on account of recurrent delays was cited as one of the major shortcomings. Most felt that the present infrastructure available for consumer redress was highly inadequate - "less number of forums as compared to the number of cases." In 90% of the cases, the time taken for final resolution went beyond the stipulated period of 90 days. Most complainants quoted this long waiting period to be the most trying aspect of the litigation.

Another aspect to which attention may be drawn, relates to the large over-dependence on lawyers. In the surveyed cases, the providers were found to be more equipped legally than the consumers, relying on their own legal staff to fight their own cases. On the other hand, the majority of consumers surveyed professed to have engaged lawyers to fight their cases. Prolonged proceedings inevitably meant that the majority had to continue paying the lawyers while their case were still being settled. Whereas many lawyers were found to be working on more than 50 cases at a time and were benefiting from the delays, the complainants were made victims which cost them both time and money.

A third aspect, to which attention may be drawn regarding the functioning of courts, relates to the subject of compensation. At present, there are no existing guidelines that govern the sums to be awarded. At present, most compensation is limited to the price of the medical service provided. In cases of medical negligence where a severe disability or even death is the main issue, the payment of a sum covering just the costs of the medical services is definitely a poor substitute, leaving the complainant highly dissatisfied. In order to restore credibility to the system, there needs to be a review of the compensation policy.

A more important aspect concerns the need for improved access. Access to courts at present, as revealed in the study, is restricted to a large extent to persons having a fixed source of income. The rural and urban poor, scheduled castes and tribes, and women, are largely under-represented, and consequently have little effective voice in the management of health services in the country.

Recommendations

Notwithstanding the complexities and limitation of study involved, this study does indeed find suitable justification for making improvements in the redress system in the near future. It recommends the gradual and steady incorporation of the following few measures into the existing system of consumer redress in the health care sector in India.

1. A mandatory Citizen's Charter for all hospitals

Highlighting clearly the rights of patients vis-a-vis the hospital authorities, in the delivery of health care services, such a Charter must be made available to all patients at all times. At present, only some public sector hospitals have such a Charter, which is refereed to as the "Patient's Charter." However, the worth of such a Charter would only be realized when it is made mandatory for all hospitals, both public and private. The fact that the majority of consumers interviewed stated that the unresponsive attitude of the hospital authorities was primarily responsible for them approaching the courts, confirms that the present pressure on courts can be reduced drastically if proper facilities of complaint redress are effectively maintained at the hospital level. The recommended mechanisms of office manuals, widely accessible complaint boxes and books along with a commitment to resolve disputes within the specified time frame, can all help to considerably reduce pressure, ensuring thus that only the more complex cases appear before the courts.

2. Institutionalize complaints procedures

In both the private and the public health facilities, the existing structure of management could deal with customer complaints more effectively. A written manual, providing specific directions, prescribing also a time frame for such action, would be useful for customers wanting to make a complaint. It is of significance that only 15% of the units surveyed did have proper office manuals available.

The report recommends the complaint box/book should me made user-friendly with full information on the name and designation of the officer responsible for attending complaints. The present survey revealed that the big and small hospitals, in both the public and privates sectors did have established mechanisms and specially designated officials to manage complaints. However, in most cases it was found that the officials did not have any specific training, nor were they accountable to the customers in general. The prevailing practice of hospital authorities for resolving disputes at their own convenience revealed a certain degree of flexibility, which in the ultimate analysis was found to be against the interest of the consumers. The present report would thus recommend that a specific time frame be adopted, following which the designated officers for handling complaints be made accountable for delayed response on customer complaints. A move such as this to introduce a stipulated time frame would definitely shift the onus of responsibility onto the concerned hospital authorities, providing thus a certain degree of reassurance to the consumer involved. The names of the complaint-handling officers should be prominently displayed to make them accountable to the customers. The report would also like to recommend that the authorities responsible for handling complaints be trained to acquire the necessary skills to handle complaints, so that the resolution of disputes takes place early and to the satisfaction of both parties concerned.

A recurrent problem raised by the survey was the reluctance by stakeholders to share accurate information. The mistrust existing between parties, it was felt, had a definite bearing on the slow and tardy progress of cases in various Consumer Forums. The report would thus suggest that programs having components of information, communication and education be made available to both service providers and users. The service providers must encourage free flow of information and clear all doubts in the mind of customers.

3. Improve functioning of the Consumer Forums

The survey undertaken revealed an existing shortage of Consumer Forums within the country. A serious consequence of which was that most cases took more than the stipulated 90 days to be resolved. To reduce the work pressure on individual courts and also ensure a speedy trial to consumers, the present report recommends a proportionate increase in the number of District Consumer Redress Forums and State Commissions throughout the country.

In addition, the report also recommends that the concerned Ministry make standard assessment every 2-3 years of the working of District Forums. Such as assessment would bring to light the deficiencies and delays. If consumer redress has to have meaning then the very process of redress needs to be made time bound. In medical cases, especially in cases of medical negligence, where verification of charges can take a longer time, the Forums must try their level best to minimize the time taken and not exceed as far as possible the 90 days time frame for reaching a final judgement. The Forums should be more stringent about the granting of adjournments in cases where there are delays in submission of replies or evidence by the providers concerned. A panel of experts should also be made available to the Forums to facilitate viewing of medical evidence. In effect, there exists an immediate and urgent need to improve the infrastructure available to the Consumer Forums so those consumers may be assured of receiving a speedy trial.

4. Increase public awareness of consumer issues

Consumer redress in the health sector in India, like elsewhere, is intrinsically related influenced by overall consumer awareness. Interviews with consumers who approached the courts for justice, revealed that a high level of awareness did exist among these consumers. Although the study revealed a high level of awareness about the existing laws on consumer protection among those using its provisions, it found that knowledge of specific mechanisms was lacking among both service providers as well as government authorities. However, the fact that only 7% approached the courts influenced by consumer organizations, and that only 2% approached influenced by media, shows that both consumer organizations and media must focus more on programs related to awareness generation.

5. Empower the Indian consumer

The survey of cases brought to fore the overwhelming level of consumer dependence on lawyers for the Consumer Forums. Many of the lawyers interviewed professed to be working on more than 50 cases at a time. Such high dependence not only makes the whole procedure of redress an expensive affair, it reduces significantly the contribution of the consumer in the process of redress. The present report therefore recommends institutions be built, where consumers can be trained to appear for their own cases, making the process of redress more intimate and relatively free of lawyers. To encourage persons from the disadvantaged sections to readily approach the established Consumer Forums, schemes similar to the prevailing "Free Legal Aid" should be introduced. Even the Government could create a special fund from the Consumer Welfare Fund to be given to consumer organizations to represent medical negligence case of SC/ST patients.

6. Amend the Consumer Protection Act and the Indian Medical Council Act

The authors recommend that the existing Consumer Protection Act and the Indian Medical Council Act should be amended to bring all the medical practitioners and the health care services within the purview of the accountability and compensation aspect of the law, irrespective of being in the private or public sector. Such a move would definitely benefit the average Indian consumer. The number of poor persons who visit government hospitals is large, and the present clause in effect reduces the rights of such patients vis-a-vis those in the private sector, to actually challenge the quality of health care services provided by government institutions. The Constitution of India itself guarantees equality to all its citizens, however the present clause in the Consumer Protection Act actually introduces an element of inequality amongst patients. A more serious concern is that such a restriction also reduces the general accountability that hospitals have towards patients, and since the poor depend on government hospitals for in-door services, the restriction in effect disempowers the poor from realizing their basic citizenship rights. Every citizen should be able to access quality health care services and claim compensation on acts of deliberate act of negligence or unfair trade practice. Doctors working in Government hospitals and charitable institutions should also be covered under all the existing laws. The Consumer Protection (Amendment) Bill is awaiting Parliament approval to cover services like health and medical services and also mandatory services provided by central/state governments.

The consumer complainants have found themselves in a disadvantageous position as compared to doctors who are always well equipped with all documentary evidence of hospital etc. The complainants have found it difficult to muster evidence. Therefore in many cases, the complainant could not prove medical negligence beyond a reasonable doubt. This is one of the reasons why the Indian Medical Council (IMC) Act has been inadequate in dealing with medical negligence, and why the Consumer Forums have become more popular. Moreover, doctors are generally reluctant to give evidence even in genuine cases against their professional colleagues, a common problem in cases involving the Indian Medical Council, prompting some to make additional recommendations about improving the IMC Act. 1

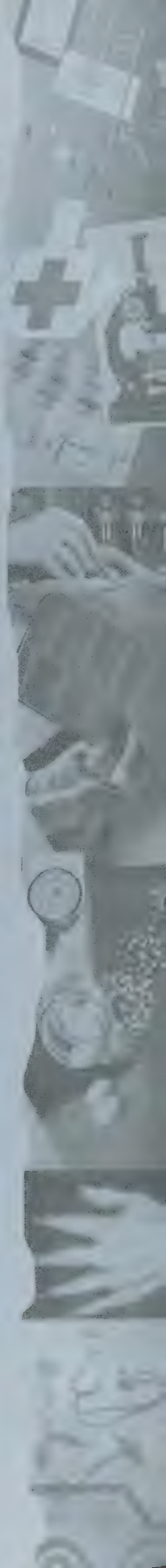
The Government of India should set-up a core group to formulate and revise the roles and terms of reference of its regulatory bodies in consultation with the health care service providers in the public and private sector and the consumer organizations. The core group should formulate guidelines and standards of service to benchmark the minimum quality levels and prompt redress in case of violations. The regulatory authority should also have the mandate from the Government of India to conduct regular studies on the functioning of the health care delivery institutions in the private and public sector. Such information would help consumers to choose the best service providers and encourage the best practitioners in the marketplace.

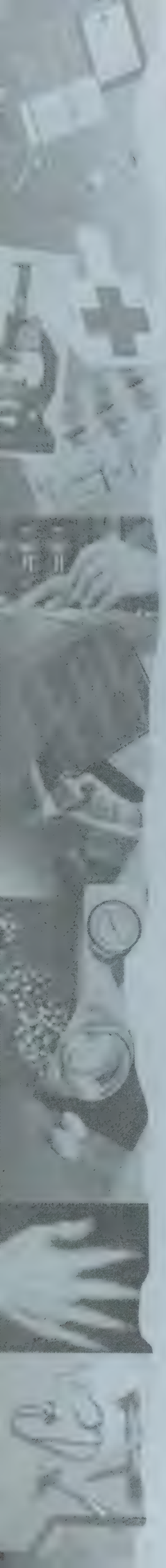
Conclusion

The area of consumer redress in health is an important component of the larger attempt towards the democratization of health management. At present in India, increasing awareness among consumers provides a fertile ground for harnessing of a larger consumer movement in the health sector in India. The study has brought to light how the existing structures work for handling complaints in private and public sector health care institutions. The report has given various probable solutions available to the policy makers to build a strong and dependable infrastructure in the health care sector in India. If providers were to benchmark the quality of services provided, and improve upon the existing system of health care management, dissatisfaction and many complaints could be prevented. Such an initiative should be woven carefully in consultation with the service providers, users, consumer groups and the government agencies dealing with health care deliveries.

For cases of alleged medical negligence that cannot be dealt with at the facility level, there is a need to strengthen the legal redress mechanisms. Although the Consumer Forums show some encouraging signs, there is a great need to broaden the scope of legal redress for medical negligence for the poor and uneducated. Efforts are also needed to develop ways to speed up the redress processes through the Consumer Forums, in addition to alternative regulatory and redress mechanisms in health care. This report recommends how to improve the functioning of Consumer Forums, strategies to increase consumer awareness and empowerment, and recommends amending the Consumer Protection Act and Indian Medical Council Act, in part to bring public hospitals under the purview of the CPA.

The authors of the report would therefore like to conclude by expressing hope that in the near future, through the joint initiatives of government authorities, consumer organizations, consumers and the providers, an effective, efficient and credible consumer redress in the health sector may well be made operational to make health services accountable, transparent and accessible for all within India.





Acknowledgement

This study could not have taken shape without the support of many key players involved in the development of the health care service in India. Several consultations took place between the Ministry of Health and Family Welfare, Government of India, State Government representatives, international development institutions like World Bank and leading NGOs on deciding the possible approaches to make a common work plan to initiate change in the health care services. For the first time the Consumer Organisations were invited to participate in such study. We wish to thank each and every one involved in making the initiative reach its logical end. We also seek similar support in future to make health care affordable and accessible to each and every Indian Consumer, especially the poor and the disadvantaged.

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Endnote

1 This matter was also discussed at length in the meeting of the Central Consumer Protection Council (CCPC), which is the advisory group to the Government of India under the provisions of the Consumer Protection Act. The Council felt that there was no need for a screening body consisting of medical and legal experts to investigate whether a prima facie case of negligence existed prior to the trial of a case of medical negligence under the Consumer Protection Act. The Supreme Court of India had already adjudicated on this aspect in the case of Indian medical Association (IMA) Vs. V.P Shanta and others in 1995 and recently in Spring Meadows Hospital vs. Harjol Ahluwalia in 1998. The argument that only medical experts can judge cases of medical negligence and a Consumer Forum was not competent to go into cases of medical negligence was rejected by the Supreme Court. The Supreme Court also upheld the composition of the Consumer Forums and their competence and the procedure followed by then in adjudicating cases of medical negligence. The council felt that cased of medical negligence were being dealt with care and caution after considering all aspects of medical jurisprudence, expert evidence and court judgements. The Council, therefore, unanimously rejected the suggestions of the Indian Medical Association to set up a screening body under the Consumer Protection Act.

Members of Central Consumer Protection Council (CCPC), drew the attention of the IMC to the inadequate provisions of the Indian Medical Council Act, 1956. One of the reasons for consumers going to the Consumer Forums was that the provisions under the IMC Act were inadequate to deal with complaints of unethical, unprofessional, and/or negligent conduct against doctors. The Council made the following suggestions for consideration of the Ministry of Health:

* Ethics-cum-Disciplinary Committee of Medical Council to medical and non-medical experts.
* Investigations of medical cases should be made time bound.
* Adequate provisions in IMC Act to exist for action against doctors.
* And lastly, to make it mandatory for all hospitals, whether private or Government, to provide medical records to the patients for their knowledge and use.

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